

REMARKS

This is a full and timely response to the final Official Action and the Decision on Appeal mailed **April 28, 2010** (the “Office Action” or “Action”). Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Request for Continued Examination (RCE):

Applicant hereby requests Continued Examination for this application and entry and consideration of this amendment consequent thereto.

Claim Status:

By the forgoing amendment, claims 1, 13, 14, 15, and 18 have been amended. Additionally, new claims 21-25 have been added. No have been cancelled. Thus, claims 1-25 are currently pending for further action.

35 U.S.C. § 112, first paragraph:

In the final Office Action, claims 15-17 were rejected under 35 U.S.C. § 112, first paragraph. These claims have been carefully reviewed in light of the Examiner's comments.

While Applicant does not necessarily agree that any of these claims failed to comply with the written description requirement, the indicated claims have been amended herein to address the issues raised by the Examiner under 35 U.S.C. § 112, first paragraph. Particularly claim 15 was amended to recite “A software element stored on the memory of a computing device” (Claim 15). (Applicant’s specification, p. 2, ll. 22-24). Following this

amendment, all the remaining claims are believed to be in compliance with 35 U.S.C. § 112 and notice to that effect is respectfully requested.

35 U.S.C. § 101:

In the final Office Action, claims 15-17 were rejected under 35 U.S.C. § 101 as not being falling within a statutory category of invention. These claims have been carefully reviewed in light of the Examiner's comments.

While Applicant does not necessarily agree that any of these claims failed to comply with the requirements under § 101, the indicated claims have been amended herein to address the issues raised by the Examiner under 35 U.S.C. § 101. Particularly claim 15 was amended to recite “[a] software element stored on the memory of a computing device” (Claim 15). Consequently, under *In re Beauregard*, this claim is now to a machine or product, both of which are statutory subject matter. (MPEP §2106; *In Re Beauregard*, 53 F.3d 1583). Following this amendment, all the remaining claims are believed to be in compliance with 35 U.S.C. § 101 and notice to that effect is respectfully requested.

Prior Art:

Rejections under 35 U.S.C. §102:

In the recent Office Action, claims 1-2, 8-9 and 12 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,145,096 to Bereiter et al. (“Bereiter”). For at least the following reasons, this rejection should be reconsidered and withdrawn.

Claim 1

Claim 1 recites:

A method of obtaining technical support for a data-processing device, comprising initiating a support session during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query, and *polling the support provider's system to determine whether the support provider has indicated a response to the query has been made available*, on a repeated and automated basis, until a response becomes available or the support session is terminated.

(Emphasis added)

Support for the amendment to claim 1 can be found in Applicant's originally filed specification at, for example, page 7, ll. 3-18.

In contrast, Bereiter does not teach or suggest “[a] method of obtaining technical support for a data-processing device, comprising . . . polling the support provider's system to determine whether the support provider has indicated a response to the query has been made available.” (Claim 1). The Examiner's Answer dated March 5, 2008 states that Bereiter that “after the client sends a data set to the server, **the client is making a inquiry (e.g. , polling) to the server** asking to see if the problem can e identified or asking to see if the server needs any further information.” (Examiner's Answer, p. 13). In fact, Bereiter teaches “[i]f, however, the result of the test at step 84 is negative, the routine then continues by *obtaining a new diagnostic map* at step 86 and returning to step 78.” (Bereiter, col. 7, ll. 17-34) (emphasis added). However, Bereiter does not teach or suggest polling the support provider's system to determine whether the support provider has indicated a response to the query has been made available.

In contrast, claim 1 recites “[a] method of obtaining technical support for a data-processing device, comprising polling the support provider's system to determine *whether the support provider has indicated a response to the query has been made available*.” (Claim 1) (emphasis added). Indeed, applicant's specification recites that “[the] polling application is operative, on a repeated basis, to poll the support provider URL, and to notify

the user as and *when a response becomes available.*” (Applicant’s specification, p. 7, ll. 7-9) (emphasis added). This subject matter is clearly not taught or suggested by Bereiter.

Respectfully, to anticipate a claim, a reference must teach each and every element of the claim, and “the identical invention must be shown *in as complete detail as contained in the ... claim.*” MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989) (emphasis added). Moreover, “[t]he prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *NetMoneyIn v. Verisign*, (Fed. Cir. 2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983)).

In the present case, Bereiter clearly does not disclose the claimed invention with each and every claimed element in the same amount of detail or as arranged in the claim. Consequently, because Bereiter clearly fails to satisfy the requirements for anticipating claim 1, the rejection of claim 1 and its dependent claims should be reconsidered and withdrawn.

Rejections under 35 U.S.C. §103:

(1). In the recent Office Action, claims 10, 11, 13-18 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,145,096 to Bereiter et al. (“Bereiter”) in view of ‘Signed Applets, Browsers, and File Access,’ Pawlan et al., April-1998, pp.1-5 (“Pawlan”). For at least the following reasons, this rejection should be reconsidered and withdrawn.

Claim 13

Claim 13 recites:

A method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising receiving device-specific data to assist the support provider in responding to a support query, *dispatching a polling application operative to poll the support provider's system in order to determine whether a response has been made available and notifying the user that the response has become available*, the polling application being dispatched, from or on behalf of the support provider, in response to an instruction generated using a trusted applet.

(Emphasis added)

Support for the amendment to claim 13 can be found in Applicant's originally filed specification at, for example, page 7, ll. 3-18.

Similar to the argument made in connection with claim 1, Bereiter does not teach or suggest "[a] method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising . . . dispatching a polling application operative to poll the support provider's system in order to determine whether a response has been made available and notifying the user that the response has become available." (Claim 13). At best, Bereiter teaches "[i]f, however, the result of the test at step 84 is negative, the routine then continues by *obtaining a new diagnostic map* at step 86 and returning to step 78." (Bereiter, col. 7, ll. 17-34) (emphasis added). Nowhere in Bereiter is it taught or suggested that a support provider's system is polled in order to determine whether the support provider has indicated a response to the query has been made available.

In contrast, claim 1 recites "[a] method of obtaining technical support for a data-processing device, comprising polling the support provider's system to determine *whether the support provider has indicated a response to the query has been made available*."

(Claim 13) (emphasis added). Indeed, applicant's specification recites that "[the] polling application is operative, on a repeated basis, to poll the support provider URL, and to notify the user as and when a response becomes available." (Applicant's specification, p. 7, ll. 7-9). This is specifically done "so that the user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available." (Applicant's specification, p. 7, ll. 3-5). This subject matter is clearly not taught or suggested by Bereiter.

The Supreme Court has addressed the issue of obviousness in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The Court stated that the *Graham v. John Deere Co. of Kansas City*, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham* to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the prior art, as evidenced by Bereiter and Pawlan, did not include the claimed subject matter, particularly a method of providing asynchronous web-based active technical support from a support provider to a user of an electronic device during a support session, the method comprising dispatching a polling application operative to poll the support provider's system in order to determine whether a response has been made available and notifying the user that the response has become available.

The differences between the cited prior art and the indicated claims are significant because recitation of claim 13 provides for a method in which a user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available. Thus, the claimed subject matter provides

features and advantages not known or available in the cited prior art. Consequently, the cited prior art will not support a rejection of claim 13 under 35 U.S.C. § 103 and *Graham*.

Claim 14

Claim 14 recites:

A server-side technical support source comprising a web server to participate in asynchronous messaging with a client-side device, the support source being operative to supply, to the device, *a polling application whereby repeated polling of the support source may be effected in order to determine if a response has been provided by the support source and notify a user of the device when the response has been provided*, the polling application being supplied to the device using a trusted applet.

(Emphasis added)

Support for the amendment to claim 14 can be found in Applicant's originally filed specification at, for example, page 7, ll. 3-18.

Similar to the argument made in connection with claims 1 and 13 above, Bereiter does not teach or suggest "[a] server-side technical support source comprising . . . a polling application whereby repeated polling of the support source may be effected in order to determine if a response has been provided by the support source and notify a user of the device when the response has been provided." (Claim 14). At best, Bereiter teaches "[i]f, however, the result of the test at step 84 is negative, the routine then continues by *obtaining a new diagnostic map* at step 86 and returning to step 78." (Bereiter, col. 7, ll. 17-34) (emphasis added). Nowhere in Bereiter is it taught or suggested that a support provider's system is polled in order to determine whether the support provider has indicated a response to the query has been made available.

In contrast, claim 14 recites "a polling application whereby repeated polling of the support source may be effected *in order to determine if a response has been provided by the*

support source and notify a user of the device when the response has been provided.” (Claim 14) (emphasis added). Indeed, applicant’s specification recites that “[the] polling application is operative, on a repeated basis, to poll the support provider URL, and to notify the user as and when a response becomes available.” (Applicant’s specification, p. 7, ll. 7-9). This is specifically done “so that the user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available.” (Applicant’s specification, p. 7, ll. 3-5). This subject matter is clearly not taught or suggested by Bereiter.

Again, the Court stated that the *Graham* v. John Deere Co. of Kansas City, 383, U.S. 1 (1966), factors still control an obviousness inquiry. Under the analysis required by *Graham* to support a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue in view of the ordinary skill in the art. In the present case, the scope and content of the prior art, as evidenced by Bereiter and Pawlan, did not include the claimed subject matter, particularly a server-side technical support source comprising a polling application whereby repeated polling of the support source may be effected in order to determine if a response has been provided by the support source and notify a user of the device when the response has been provided.

The differences between the cited prior art and the indicated claims are significant because recitation of claim 14 provides for a method in which a user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available. Thus, the claimed subject matter provides features and advantages not known or available in the cited prior art. Consequently, the cited prior art will not support a rejection of claim 14 under 35 U.S.C. § 103 and *Graham*.

Claim 15

Claim 15 recites:

A software element stored on memory of a data-processing device for use in the provision of technical support to a user of the data-processing device, the software element being, in response to an indication of trust being given by the user, operative to effect or permit a download of *a polling element whereby a support provider may be polled, on a repeated and automated basis, in order to determine if a response has been provided and notify the user when the response has been provided.*

(Emphasis added)

Support for the amendment to claim 15 can be found in Applicant's originally filed specification at, for example, page 7, ll. 3-18 and page 2, ll. 20-23.

Similar to the argument made in connection with claims 1, 13, and 14 above, Bereiter does not teach or suggest "[a] software element stored on memory of a data-processing device . . . operative to effect or permit a download of a polling element whereby a support provider may be polled, on a repeated and automated basis, in order to determine if a response has been provided and notify the user when the response has been provided." (Claim 15). At best, Bereiter teaches "[i]f, however, the result of the test at step 84 is negative, the routine then continues by *obtaining a new diagnostic map* at step 86 and returning to step 78." (Bereiter, col. 7, ll. 17-34) (emphasis added). Nowhere in Bereiter is it taught or suggested that a support provider is polled in order to determine if a response has been provided and the user is notified when the response has been provided.

In contrast, claim 15 recites "*a polling element whereby a support provider may be polled, on a repeated and automated basis, in order to determine if a response has been provided and notify the user when the response has been provided.*" (Claim 15) (emphasis added). Indeed, applicant's specification recites that "[the] polling application is operative, on a repeated basis, to poll the support provider URL, and to notify the user as and when a

response becomes available.” (Applicant’s specification, p. 7, ll. 7-9). This is specifically done “so that the user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available.” (Applicant’s specification, p. 7, ll. 3-5). This subject matter is clearly not taught or suggested by Bereiter.

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The differences between the cited prior art and the indicated claims are significant because recitation of claim 15 provides for a method in which a user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available. Thus, the claimed subject matter provides features and advantages not known or available in the cited prior art. Consequently, the cited prior art will not support a rejection of claim 15 under 35 U.S.C. § 103 and *Graham*.

Claim 18

Claim 18 recites:

A method of obtaining technical support for a data-processing device, comprising:

establishing a support session using a web connection during which device-specific data is conveyed from the device to a support provider to assist the support provider in responding to a support query;

downloading a polling application from the support provider using a trusted applet and *polling, using the polling application, the support provider's system for a response to the query, on a repeated and automated basis, in order to determine if a response has become available or until the support session is terminated.*

(Emphasis added)

Support for the amendment to claim 18 can be found in Applicant's originally filed specification at, for example, page 7, ll. 3-18.

Similar to the argument made in connection with claims 1, 13, 14 and 15 above, Bereiter does not teach or suggest "[a] method of obtaining technical support for a data-processing device, comprising . . . polling, using the polling application, the support provider's system for a response to the query, on a repeated and automated basis, in order to determine if a response has become available or until the support session is terminated." (Claim 18). At best, Bereiter teaches "[i]f, however, the result of the test at step 84 is negative, the routine then continues by *obtaining a new diagnostic map* at step 86 and returning to step 78." (Bereiter, col. 7, ll. 17-34) (emphasis added). Nowhere in Bereiter is it taught or suggested that a support provider is polled in order to determine if a response has been provided and the user is notified when a response has in fact been provided.

In contrast, claim 18 recites "polling, *using the polling application*, the support provider's system for a response to the query, on a repeated and automated basis, *in order to determine if a response has become available or until the support session is terminated.*" (Claim 18) (emphasis added). Indeed, applicant's specification recites that "[the] polling

application is operative, on a repeated basis, to poll the support provider URL, and to notify the user as and when a response becomes available.” (Applicant’s specification, p. 7, ll. 7-9). This is specifically done “so that the user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available.” (Applicant’s specification, p. 7, ll. 3-5). This subject matter is clearly not taught or suggested by Bereiter.

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The differences between the cited prior art and the indicated claims are significant because recitation of claim 18 provides for a method in which a user is spared the somewhat laborious task of repeatedly accessing the support provider URL, to determine whether or not a response to his/her query is yet available. Thus, the claimed subject matter provides features and advantages not known or available in the cited prior art. Consequently, the cited prior art will not support a rejection of claim 18 under 35 U.S.C. § 103 and *Graham*.

(2). In the recent Office Action, claims 3-7 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,145,096 to Bereiter et al. ("Bereiter") in view of 'Signed Applets, Browsers, and File Access,' Pawlan et al., April-1998, pp.1-5 ("Pawlan") and in further view of Rose Software Forums (published post 'AutoPlay After Restart', posted on Indigo Rose Software Forums. The rejection of claims 3-7 and 19 should be reconsidered and withdrawn for at least the same reasons given above in favor of the patentability of independent claims 1 and 18.

Conclusion:

In view of the foregoing arguments, all claims are believed to be in condition for allowance over the prior art of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicant reserves the right to set forth further arguments in future papers supporting the patentability of any of the claims, including the separate patentability of the dependent claims not explicitly addressed herein. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed.

The absence of a reply to a specific rejection, issue or comment in the Office Action does not signify agreement with or concession of that rejection, issue or comment. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

If the Examiner has any comments or suggestions which could place this application in better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

DATE: June 3, 2010

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